THE GENESIS OF THE LAND TENURE SYSTEM OF THE UNITED STATES

BY

MARSHALL DEES HARRIS

B. S., University of Kentucky, 1926

M. S., University of Illinois, 1932

AN ABSTRACT OF A THESIS

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN AGRICULTURAL ECONOMICS IN THE GRADUATE SCHOOL OF THE UNIVERSITY OF ILLINOIS, 1942

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THE GENESIS OF THE LAND TENURE SYSTEM OF THE UNITED STATES

Some of the most important and intriguing influences in the politico-economic development of the United States are those that surrounded the evolution of our system of land tenure during the colonial period. Nevertheless, they have not been given deserved scrutiny by historians, economists, and other social scientists. In considering the effects of these influences, moreover, it cannot be overlooked that the discovery and settlement of America set the stage for major economic, social, and political adjustments in the same way that wars, revolutions, and similar catastrophic events have made possible sweeping changes in the previous *status quo*.

Publications dealing with land tenure provide fairly adequate information of the feudal land system from which many American tenure principles have been derived. Numerous exhaustive treatises have been written on the historical antecedents of the land-tenure system as exemplified in English feudal law. Also many studies on real property describe in detail the present status of laws governing the acquisition, possession, and use of land. Many excellent localized studies indicate the present economic and social position of the several tenure groups in the United States. Yet material on the struggle for free tenures during our colonial period is fragmentary and scarce.

It is impossible, of course, to encompass all aspects of the land system of colonial America in this abstract; but it will be possible to note many of the adjustments that took place about the same time that the foundation for democratic government was being laid.

Of particular importance were the tenure concepts that the colonists brought with them from their native countries and the procedures they used to attain title of the land from the Indians. The second set of significant influences included the provisions of the territorial grants to the several coloniz-

ing agencies and the re-grants to the tillers of the soil. Adjustments in rules and regulations governing the occupancy, use, and alienation of the soil and the economic, social, religious, and political forces and conditions from which arose those rules and regulations were also of importance. But before considering these factors the substance and content of the current concept of tenure in land should be outlined.

The Nature of Land Tenure

The concept *land tenure* refers to the manner in which and the period for which rights in land are held. The term "tenure" means the holding of property, especially real estate, of or by reference to a superior. An indispensable dimension of tenure is the period for which the land is held. The term "land" encompasses not only the earth's surface and other free gifts of nature, including things both above and below the surface, but also those things physically attached to land by man. Land also includes things not perceptible by the bodily senses, that is, rights intangible and immaterial.

Thus, land tenure is concerned with all those relations established among men, determining their varying rights in land. The basic consideration therefore is *rights;* it is neither *men* nor *land.* Land is the object of the tenure relation, and the relation is between men; tenure is concerned with rights in the object of the relation.

Although, strictly speaking, tenure means holding of a superior, and land in the United States generally is not thought of as being held of a superior (at least in a feudal sense), custom sanctions the use of the term to describe any legal act of holding land in this country. Tenure is universal in its application. All land in this country is held under some form of tenure, and every person either directly or indirectly has some rights in and consequently some form of tenure in one or more parcels of land.

Rights in land may be either public or private, but they are always attached to specified parcels of land measured on the earth's surface. If they are public, they may be

complete; if they are private, they are always less than complete. Without exception, units of government in the United States have reserved three rights in the land alienated to private parties—the rights to tax, to condemn, and to police. In addition, governments maintain a reversionary interest that they cannot alienate, for they must retake any rights previously granted to private parties when these parties no longer desire to maintain their rights.

Rights assigned to private parties are held under types of tenure that are called ownership, tenancy, or some lesser estate. Title is the badge of ownership, while tenancy is somewhat analogous to feudal tenure. Some forms of share-cropping are neither ownership nor tenancy; such share-cropping seems to be a hybrid—a cross between an employer-employee relationship and a landlord-tenant relationship—that may be recognized some day at law as a separate tenure form. Even though ownership and tenancy are the principal tenure forms, a multitude of lesser estates in land such as those including mortgages, easements, trusts, and life estates are important.

Although all members of society have tenure rights in land, some people hold special rights. There may be important differences from one jurisdiction to another, but these rights are distributed according to well-recognized rules and regulations. These regulations are not immutable; they were established by society and are subject to adjustments under principles laid down by society.

Rights transferred to private parties allow considerable freedom in the use of land. This freedom, however, is qualified; for the holder of these rights has certain general responsibilities to the group, and also specified responsibilities to his neighbors. Because private parties have considerable freedom in making tenure arrangements, this country has a wide variety of ways of holding rights in land. Rights may be held privately by individuals, partnerships, corporations, and coöperatives, or they may be held publicly. They may be held either by a resident on the land or by an absentee.

The land in which tenure rights are held may be in single units or in noncontiguous parcels. These parcels may represent either ownership or operating units, and they may be large or small. The rights may be held for long, short, or indeterminate periods, and they may be definite or indefinite.

The present concept of land tenure in the United States and the principles upon which the system was based are the results of centuries of development. These principles, however, more immediately grew out of the English feudal system and the experiences of the Thirteen Original Colonies.

Land Tenure of Feudal England

When William the Conqueror took over England in the eleventh century, he decreed that all land of the realm should be held of him as lord paramount. He proceeded to give the land to his loyal men, who in turn parceled it out to those who occupied it and who would swear allegiance and fidelity to them and through them to the king. It would be impossible in this brief space to outline the relations established between the king and the great lords, and between these lords and the lesser lords and tenants, and so on down the feudal hierarchy to the villains. It is sufficient to indicate that at the height of feudalism many burdensome restrictions were attached to the system of land holding. The most familiar of these incidents were homage, fealty, wardship, marriage, relief, primer seisin, aid, escheat, and fine.[1] In the early days of feudalism many of these charges were uncertain and costly. They were also burdensome, for they restricted the freedom with which the land could be alienated and used. The feudal tenants, however, did not wait long before they began to obtain noteworthy adjustments in the oppressive tenures established by William and his successors.

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[1] *Homage*—act symbolizing personal subjection; *fealty*—oath of fidelity; *wardship*—right to rents and profits during minority of heirs; *marriage*—right to a payment for consenting to the marriage of a vassal's daughter, and later a son; *relief*—payment by heir for admittance to feudal estate; *primer seisin*—right to hold land and take profits until relief is paid; *aid*—payment to ransom the lord, to knight his son, and to provide a dowry for his daughter; *escheat*—right to reversion when heirs fail; and *fine for alienation*—payment for privilege of transferring land to another.

By the end of 1660, the year in which military tenures were transformed into free and common socage tenure, many of the more unsatisfactory aspects of true feudal tenure had been eliminated. Although the doctrine of tenure was still recognized, alienation of fee simple estates was relatively free under rather straightforward rules, and even copyhold estates and leasehold interests could be alienated with considerable freedom. Estates in land could be devised by testamentary evidence, and dower interest and tenure by curtesy were recognized at law. Intestate succession followed well-established rules that preferred males to females and the whole blood to half blood, that permitted descendants to take by representation, and that recognized primogeniture as a major principle but required that females inherit equally. Many burdensome incidents were abolished, and escheat was confined to failure of issue and treason. Leasehold interests were held under legal rules and contractual relations similar to those of the present day in the United States.

Tenure in England, however, was extremely heterogeneous, as it is in the United States today. In some areas, particularly in Kent, land was held under freer tenure than was common throughout the Kingdom. The burdensome incidents of relief, wardship, and marriage were never tolerated by Kentishmen. Peculiar to tenure in Kent, even before 1660, were freedom of alienation, nonforfeitability for felony, devolvability and partibility by testamentary devise, and dower interest without regard to issue. All free Englishmen strove to hold their land under the free and common socage tenure of Kent, and it was this type of tenure that was outlined in many of the colonial charters.

Some Factors Influencing Adjustment

When settlement of the New World started, the situation confronting the colonists may be summarized briefly as follows: A frenzied desire to establish a trade route to India existed; England had developed over the centuries an insatiable appetite for gold, with a corollary hope of avoiding exportation of coin; it was necessary to obtain from other

European countries some needed articles, and England was able to produce more goods of certain kinds than she could use; unemployment was increasing rapidly and the nation was in search of a place to send its surplus population; many small groups were searching for places to settle where they would be free to worship as they pleased; and some groups who realized that feudalism was fast disappearing saw America as a place where it could be made to bloom again.

When the colonists left England, they were promised land under the easiest and freest of English tenures. Those in charge of the colonization of America received charters that made it possible to re-grant land to the colonists on such terms. When they arrived in America, the territory on which the colonists desired to settle was occupied by the Indians; consequently, the colonists were confronted with the necessity of satisfying the Indians' claims. In addition, the early settlers found themselves in a frontier economy with an abundance of "free" land and almost completely isolated from the outside.

All these conditions possibly had an influence on the land-tenure adjustments made during the colonial period. They will be examined one by one in order to indicate their relation to the tenure system that emerged about the time that the new democracy was established.

Forces Motivating Colonization.—The desire to discover a trade route to India apparently had no effect on the form of land tenure prevalent in colonial times. None of the colonists claimed land under the charters that had been granted for purposes of exploration long before settlement was made in America.

Desire for gold and other precious metals was, no doubt, an important influence on the tenure system. In all of the charters there were reservations covering gold and silver and sometimes other metals. Colonizing agencies generally made similar reservations when they re-granted the land to the colonists. Additional prominence was accorded mining, when it was provided that opening mines would satisfy the require-

ments for seating and planting. The English Crown and the colonizing agencies were willing to grant relatively free tenure in the untamed wilderness to those who would bring back precious metals; this procedure was in keeping with the one used by the Crown to encourage development schemes in the homeland.

The desire to find a source of supply for articles that England could not produce had a direct influence upon the land-use rules and regulations that concerned such items as the planting of mulberry and fruit trees, the growing of as much corn as possible, and the various requirements for adequate seating. The almost complete dependence of the settlers upon agriculture and the restrictions placed upon the development of commerce and manufacturing united the colonists in the fight for free tenure; for land was to be of first importance as a factor in their economic life.

Georgia doubtless furnishes the outstanding example of a colony established for the purpose of absorbing the surplus population. Although this objective had a marked influence upon the types of tenure granted during the first few years, it is apparent that its effect did not last long, for the colonists soon washed out the restrictive rules found in the early grants. In this connection it should be recalled that settlement in Georgia took place more than a century after John Smith and his group settled at Jamestown, and that many liberal ideas were pretty well established before the end of the first quarter of the eighteenth century.

The desire for religious freedom no doubt had a direct and important influence on the system of land tenure. It was strongest in New England, and from earliest times the four New England colonies held out strongly for "completely" free tenures. They scrupled against taking the oath of supremacy and allegiance, and were granted concessions; they believed in equal devolution as a principle based upon religious equality, and finally won out in a fight with authorities in England; they clung steadfastly to the freedom under the Massachusetts Bay Colony rather than submit to the more feudal tenures of proprietors Gorges and Mason.

By the seventeenth century the feudal system was fast waning in England, and many who disliked the change looked upon America as a fertile ground for the development and maintenance of the dependent political and economic order that is generally regarded as feudalistic. This is not at all apparent, however, in the literature of the day, particularly in the prospectus prepared by Parliament on the opportunities offered by one of the colonizing agencies. One must depend upon what was done rather than what was said; for the early colonizers, like their successors in our westward march across the prairies, foretold of great riches to those who would venture, at the same time watching for every opportunity to line their own bulging pockets with more gold. Furthermore, the social motives were held high without an inkling as to either the desire of political leaders to do so or the possibility of the development of America as a colonial possession, with all the disabilities that a colonial possession experiences. The enormous Dutch patroons, the boundless English hundreds, Baltimore's and Penn's extensive manors, Locke's feudal scheme for the Carolinas, and numerous grants of private plantations bear testimony of the desire to establish, on the new soil, feudal estates and a landholding aristocracy —a landed gentry of the first order. We will have to look to other factors for the forces that prevented the development of feudalism in America.

Provisions of the Early Charters.—Among the forces that prevented the development of feudalism in America were the free tenure provisions of the charters under which the land was granted to the colonizing agencies. In nine of the Thirteen Original Colonies, land was granted in free and common socage, as of the manor of East Greenwich in the County of Kent, and not *in capite* or by knight service. These colonies were New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Virginia, North Carolina, and South Carolina. Georgia was granted in free and common socage, as of the manor of Hampton Court in the County of Middlesex. Maryland, Pennsylvania, and Delaware were granted in free and common socage, by fealty only for all services, as of the Castle of Windsor in the County of Berks.

The tenure of Kent was the freest of all English tenures, while the provisions attached to the Georgia grant restricted considerably the kinds of tenure that could be granted. The grants for Maryland, Pennsylvania, and Delaware permitted the establishment of any kind of tenure desired by proprietors Penn and Baltimore—they could even establish manors, a power that the king did not hold over the land in England. Thus, the widely divergent tenure provisions in the colonial charters permitted the development of a highly heterogeneous tenure situation.

Although historians are not in agreement as to the effect of the Kentish tenure clauses in the early charters, it appears that the colonists were influenced by these provisions in their fight for free and easy tenure. Thus, both the forces that motivated the settlement of America and the tenure provisions of the charters, under which the majority of the colonies were settled, permitted the development of a free land-tenure system in America. Most of the charters actually encouraged the establishment of free tenures; only a few offered discouragement, these being the grants for Georgia, Maryland, Pennsylvania, and Delaware. That the tenures in these four colonies at the time of the Revolution were not significantly different from those in the other colonies indicates that other and more powerful forces must have been in operation.

Grants to Settlers.—When it was found that the new country did not abound with precious metals, the colonizing agencies needed more than ever to offer inducements to get men to come to the New World. The chief attraction was the promise of land to be held under relatively free and easy tenures. Shareholders in the trading companies were offered 50 acres or more for each share valued at 12 pounds and 10 shillings. Later, as the original capital stock became depleted, treasury right grants were made to those who helped replenish the coffers of the company for the purpose of settlement.

Although grants of land to shareholders and the treasury right grants were the first to appear, they soon gave way in importance to the headright system of inducing persons to come to America. Under the headright system, land was

granted to any person who either paid his own way or paid for transporting one or more persons to America. Other procedures for getting land into the hands of settlers included grants of large blocks to closely knit groups (as exemplified by the early New England town system), family-sized grants direct to individual settlers through sale, grants to private parties for military and meritorious services, and grants to individuals or groups to encourage the development of industry and to help finance the establishment of schools and churches.

The tenure conditions upon which all of the procedures for grants were made were relatively free and easy, and represented a marked departure from the more feudalistic tenures customary in England. They were similar, however, to the free tenures accorded those who would undertake developmental projects in England, and they originated from the necessity of offering an inducement to get settlers to come to the New World. Accordingly, these liberal allotments of land on easy terms had a significant influence on the tenure system of colonial America.

Conflicting Claims of the Indians. — Soon after the colonists arrived in America they found it highly advantageous to keep the Indians as quiet and as satisfied as possible. Therefore, they used various devices to obtain Indian land. Much of it was bought; some was obtained through gifts, some by treaty; some was seized. The Indians even abandoned part of their ancient territory and alienated some of it by means of long-term leases. Regardless of the procedure used, the general rule was to obtain from them as much land for as little as possible. Many fraudulent transactions were consummated. Even in those instances where some pretense of equitable transactions was maintained, it is doubtful that the Indians had any idea that they were transferring forever their ancient seats. A study of their practices of holding land does not indicate in the least an appreciation of what was meant by a cession of land, or a grant, or a treaty as a means of alienating forever their territory.

Observation of these unscrupulous transactions with the Indians probably made the settlers more anxious to secure freer tenures and to arrange their tenure relations so that their land could not be taken from them easily. They doubtless remembered these transactions when they rebelled against the quit-rents and later against the mother country. Why should they pay tribute to an absentee landlord who had acquired his rights unscrupulously?

Frontier Economy. — When the colonists arrived in America, they took possession of a territory relatively free from the tenure heritage of the past. The influence of the Indians' practices of holding land was inconsequential, although, as we have seen, the methods used to obtain the consent of the Indians to occupy the territory were of some direct importance. The colonists were not hindered by the necessity of making changes in aboriginal tenure. They found in America a favorable environment for the making of major adjustments in the tenure system. The economic, social, and political situation of the frontier was supported by half a millennium of unsatisfactory tenure conditions in England. The latter part of the period saw the English commoner fighting for freer tenures and being awarded significant adjustments.

The characteristics of the American frontier economic situation made possible continuation of the struggle for free tenures. In fact, the situation was more favorable than that existing in contemporary England. This was true because of four frontier conditions confronting the colonists: first, the necessity of protection against outsiders; secondly, permission to subdue the new territory unhampered by restrictive rules and regulations; thirdly, an adequate supply of finances during the early stages; and fourthly, an impelling force driving the individual in his struggles.

Some of the numerous measures taken to meet the first condition may be listed categorically as follows: the action of individual settlers and colonizers to keep the Indians satisfied and coöperative, the development of frontier-military settlements to protect the established colonists, and the

campaigns to drive the hostile French and Indians from the area. The Indians were easily satisfied with trinkets, a few pieces of silver, and the ceremony of a treaty. To encourage people to settle on the frontier, the land was granted on particularly liberal terms and free tenures, and soldiers of the French and Indian wars were recruited with promises of large tracts of land under free tenures.

Permission to subdue the new territory without restrictive regulations was the essence of the colonial settlement scheme. Claims of the Indians were satisfied easily and expeditiously. Provisions for surveying were speedy and liberal, and did not have a deleterious effect even where the most meticulous care was exercised. Squatters were looked upon unfavorably only when they rebelled against the quit-rents. The general spirit of the moment was to settle upon good land and then go through the incidental formalities of deeds and records. These conditions had an influence upon the free basis under which land was granted to the settlers.

To keep a steady stream of settlers flowing to America, great effort was exerted in interesting men of wealth in the possibilities of the New World. The usual inducement was the granting of large tracts of land under liberal terms. In some instances the government even advanced funds for settlement purposes; in addition, outright gifts of land were common. This made possible low purchase prices, the deferring of principal payments, and the withholding of quit-rents until after the settlers became established.

The reasons why settlers left their native land to brave the hardships of the New Country were important. To the economic, social, and religious motives must be added the encouragement of securing adequate-sized holdings, the inducement of relatively low charges upon the land, and the anticipation of a way of life better than that in the home-land. Full family-sized or large holdings and low charges upon the land not only encouraged people to come to America but gave them a taste of the fruit to be attained if free tenure could be fully established and firmly entrenched.

Each of these factors, characteristic of the American frontier economy, greatly influenced the development of a free tenure system in this country. The formality of quieting the "title" of the Indians supported the settlers' pride of possession. The privileges granted those who would make military settlements upon the frontier helped kindle hatred for quit-rents. The freedom accorded the squatter made him feel that the land belonged to him alone—that it was his from the height of the heavens to the core of the earth; for, after all, had he not fought back the savages, raised the logs in his house by the sweat of his own brow, and carved a farm out of the forest primeval?

The factors at work in any typical frontier economy were compounded in colonial America because of its complete isolation. Isolation under these circumstances made for self-confidence, equality, and distrust of the absentee. The colonists could not well escape the feeling of loneliness and self-dependence, and these made for resourcefulness and lessened the restrictions of earlier associations. There did not exist, in any substantial degree, the sustaining influences of customary usages and forces for the maintenance of the *status quo* that developed under entirely different settings. Equality in the early commercial organizations and religious groups, and some endeavors at the equal granting of land, and later equal devolution were indications of the spirit of equality that was pronounced throughout the colonial period.

The feeling of equality, the spirit of self-reliance, and the necessity for self-dependence, coupled with the weakness and slowness of rule exerted from a distance, formed the basis for distrust of the absentee, whether in administration of government or of land. Self-confidence and equality did not go hand-in-hand with paying tribute in the form of quit-rent to an absentee who rendered no obvious service and who occupied his superior position largely because of circumstances with which he had little or nothing to do.

Free Land and Democratic Government

Another factor that prevented the development of feud-

alism in America was the great abundance of free land. In England, land was scarce and population was pressing hard upon the resources. Land could be and had been "monopolized," and vested interest could be maintained, at least for a relatively long period of time. But this was not true in America. Even on the seaboard where the population was most dense, land was plentiful and a person could move on westward with but little restraint.

A powerful influence on the type of land tenure evolving in America was the political system envisaged by the colonists. It could not be hoped, it was reasoned, that political democracy could be maintained in the absence of economic and social democracy. Feudal tenure was geared to the maintenance of a rigid caste system, both economically and socially; therefore, it must not be set up. American political democracy could neither be attained nor maintained without a wide distribution of land in the hands of those who tilled the soil. No one felt this more strongly than Jefferson, who observed the effect of the great landowning families in his native State of Virginia. One of the important measures that he advocated and fought for was a law abolishing primogeniture. He calculated that such action would bring about a wider distribution of landed property and a more stable political democracy.

Thus, it was in a frontier economy, almost completely isolated from outside influences, that the struggle for freer tenures took place. There existed an abundance of unsettled land and a democratic spirit, based upon equality, self-dependence, and hatred of the absentee, and sustained, if not compounded, by the economic, social, and political forces that caused people to leave their firesides and native land. It was in this setting that the colonists worked out new land-tenure relations as experience guided the way, and made significant adjustments in the concepts of land tenure that they had known in their mother countries. With these forces in mind, adjustments made in the system of land tenure during the colonial era will be reviewed briefly and some attention given to the principles that were developed at that time.

Land Tenure Adjustments

It is frequently assumed that the colonists completely dispensed with feudal tenure principles and established a new system of landholding in America. This is an overstatement of the case. Many aspects of feudalism only underwent readaptations or adjustments. For example, the concept of tenure still persists. Regardless of the theoretical explanations developed in this country, land is held under the state as lord paramount, and the tenant for life or for a period of years still has a tenure relation with the reversioner.

In addition, many of the feudal incidents are still evident, although their names, forms, and impact may have undergone change. For example, although homage was not common in the colonies, fealty was almost universal. Many people did not like to take an oath of personal subjugation; the oath of fidelity and allegiance was much more becoming to "free" men. Indeed, homage had largely disappeared in England. It had been used in military tenures, but when they were conquered in 1660, homage, too, was defeated. Fealty—the oath of allegiance—to the present day is the mark of citizenship.

Wardship and marriage in their feudal form were not recognized in socage tenure. It should be observed, however, that from the standpoint of the characteristics of rights in land, the control of the state over minors is similar to wardship from the power viewpoint, but is very dissimilar from feudal wardship and marriage since it does not envisage the privilege of the overlord to make profits from the minor's estate.

Relief and primer seisin were probably practiced to a limited extent in some of the colonies. Their twentieth-century counterpart is inheritance taxes, which would hardly be recognized in the modern tax regalia. Taxes are just as real today, however, and when they appear in a steeply graduated form they would put to shame the feudal incidents of old.

The aids of colonial America were the quit-rents. A

study of their rise and fall would be both interesting and instructive. The aids of today—real property taxes—are commonplace. The increasing prevalence of homestead tax exemptions, the decreasing part that real property taxes are playing in revenue-raising schemes, and the proposals for graduated land taxes would serve as a basis for additional interesting commentaries on this whole line of development.

Fines upon alienation were supposedly practiced in some colonies. They were far too feudalistic for most of the colonists, however, and because they were not widely used in England and were abolished in 1660, they must have been of only minor importance. They are analogous to stamp taxes, and recording and registration tax fees of the present day.

Escheat is still with us. Although it has not even changed its name, the theory is somewhat different. It has completely lost the tainted "attainder of the blood" since land no longer escheats for a felony. Selected requirements of settling and seating, appended by the colonizers, were no longer necessary when settlement became a responsibility of the Federal Government; so they were readily dispensed with.

Distress and eminent domain have not been mentioned as incidents; they are sufficiently akin in some respects to be worthy of consideration. Eminent domain was practiced in colonial America, and is still a characteristic of the system of land tenure. It is, however, more of an essential prerogative of organized society than an incident. Distress has carried over to our modern tenancy. Although it may still exist in Pennsylvania as a power incident, it has changed form in other jurisdictions to meet the requirements of the tax-collection procedure.

That the revolutionists wanted to assure themselves freedom from the feudal incidents is attested by the positive actions taken by most of the States and the attainment of the same objectives without statutory action by Delaware, North Carolina, and Georgia. Of course, the two most burdensome incidents did not follow socage tenure to America,

and in many instances others were lost or changed form during the colonial period. In fact, fealty, escheat, and quit-rent, and its corollary distress, were the only significant feudal incidents in colonial America. The first two were inconsequential. Quit-rent was so obnoxious to the free men of New England that they would not pay it. Except in few instances, it was not levied, and even there it had largely, if not entirely, disappeared by the time of the Revolution. From New York south, it was a source of smoldering dissension from the earliest time. It does not appear that the colonists resented paying for the support of local government, for they levied taxes upon themselves for many purposes. They seemed incapable, however, of rationalizing the use of quit-rent payments by the lord proprietors.

The feudal laws of intestate succession, and their influence on testamentary devise underwent major adjustments during the colonial period. The rule of the great landholders that the eldest son should take all and the wide-spread preference of males over females as heirs were dispensd with. Primogeniture grew out of the need for military service and the desire for the maintenance of large landed estates, but this practice was not consonant with early American ideals of equality and freedom. For the same reason, with added emphasis on equality, all heirs of the same degree were to inherit equally, and estates in fee tail could be barred almost with impunity.

The colonists added but little to the system of recording mortgages, deeds, and wills. Their contribution was in the simplification of transfers. On the other hand, the forces of freedom did not permit an effective approach to the persistent problem of size of holdings. Neither did the colonists make significant adjustments in the relations between landlords and tenants because of the infrequency of tenancy.

Contributions to the National Land Policy

The origin of the free grants of land by the Government to the settler, well exemplified in our homesteading scheme. antedated the Constitution. They were the direct outgrowth of the headright scheme of colonial America; for, although

the two schemes were slightly different procedurally, they were similar substantively.

The colonial squatter established the principles that were later recognized in the preemption laws. He developed possessory rights by the construction of houses, barns, fences, and other improvements on the land, and these rights usually flowered into ownership without cost to the settler. These practices continued unabated throughout the Confederation and after the Constitution until they were given legal sanction.

The practice of selling land to settlers upon credit and at low prices was used widely during the colonial period, and was formalized by the Congress in 1796. Grants for military service also were common throughout colonial America and were continued until supplanted by the homestead system. Grants for schools, too, were a part of the colonial land system that was continued as a major policy when we became a nation. A similar practice was the granting of land for the establishment of industry.

One of the more important contributions of colonial America to later national land policy was the rectangular system of surveying. This system grew out of the experience of several of the colonies, although it was most common in New England.

SUMMARY

The free tenure system handed down by the founding fathers was conditioned largely by the spirit of freedom, equality, and self-confidence prevalent throughout frontier America. The revolutionary spirit growing out of hatred for the absentee and resentment against feudal charges upon the landholder without commensurate services had their influences. The lax enforcement of rules laid down by the colonizing agencies and the weakness of local government, and the outlets readily available to those not satisfied with local conditions, as exemplified in the vast unclaimed domain and competition among the colonies for settlers, were also noteworthy. Of signal importance was the desire to establish

and maintain freer institutions than those from which many of the colonists fled.

It was under the influence of these forces that equal devolution was made a basic tenure principle, that the right of alienation attained its highest freedom, that principles of primogeniture and entails were generally outlawed, that the possibility of escheat was reduced to a minimum, that the man-man relation of lord and vassal completely (at least theoretically) gave way to the more stable man-society relation of fee simple tenure, and that the holder of the fee was given permission to parcel out his rights in the land in a wide variety of heterogeneous tenures.

These adjustments were taking place at a time when the quest for freedom and equality was being rewarded; when the colonists were faced with the task of remedying some of the injustices of feudal England; when there was a struggle between the rights of wealth, of rank, and of official position and the rights of free, hard-working men without special political favor; and when these forces were being purified in the crucible of liberal philosophizing that was almost revolutionary. When the self-confident colonial revolutionist faced these critical problems, there could be little doubt of the outcome. Men's minds, hearts, and pocketbooks drifted from old moorings, and all the power of antiquity and tradition, supported by powerful vested interests, could not stem the tide of equality and freedom—in land tenure as well as in government.

VITA

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